IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2230 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ARVINDBHAI MANIBHAI PATEL

Versus

STATE OF GUJARAT, 3RD SPECIAL LAND ACQUISITION

Appearance:

1. Special Civil Application No. 2230 of 2000

MS MAMTA R VYAS for Petitioner No. 1

MR PR ABICHANDANI, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR HS MUNSHAW for Respondent No. 3

NOTICE SERVED BY DS for Respondent No. 3

RULE SERVED for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 24/09/2001

ORAL JUDGEMENT

1. Heard ld. counsel Ms. Mamta Vyas for the petitioner, led. AGP Mr. Abichandani for the State, and led. counsel Mr. Munshaw for respondent no.3.

2. The grievance of the petitioner is that though he is entitled to pay-scale of Trained Teacher holding Teaching Diploma, in view of the policy decision taken by respondent State on 2.9.1978 reflected in document Annex.D, he was not granted that pay-scale. It is contended that feeling aggrieved by the decision of not granting pay-scale of a Trained Teacher, three persons approached this Court, two of them had filed petition being Spl.C.A. NO. 3137/81 whereas one Navinchandra Jani had filed Spl.C.A. No.3167/81 and the same were admitted by the Court. When these petitions were pending, the present petitioner filed the petition of similar type based on the similar set of facts and the same was registered as Spl.C.A. No. 3222/81. While admitting the petition filed by the present petition, the Court passed order to the effect that said petition viz. Spl.C.A. No. 3222/81 be heard with Spl.C.A. Nos. 3137/81. It seems that at that relevant point of time, the petitioner as well as the Court was not aware of pendency of Spl.C.A. No. 3167/81, but fact remains that all the three petitions were to be heard simultaneously and were to be disposed of by a common judgment in view of the similarity in the nature of litigation. When Spl.C.A. No. 3222/81 came up for final hearing, this Court (Coram: S.K. Keshote,J), vide order dated 18.3.1996 disposed of the said petition. I would like to quote the relevant part of the judgment for the purpose because the same is very relevant for the purpose of disposal of the present petition :-

> ".... On 14th August, 1981, this Court has issued notice in this case and further directed that it may be heard along with Special Civil Application No. 3137 of 1981. Interim relief has also been granted to the petitioner. Then on 15th September,1981, rule was issued and interim relief was ordered to be continued and it has been ordered to be heard with Special Civil Application No. 3137 of 1981. The learned counsel for the petitioner has produced the copy of the judgment of this Court in Special Civil Application No.3137 of 1981. This Special Civil Application has been decided by this Court on 21st December, 1993.
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> 2. The ad-interim relief has been prayed by the petitioner in para no.15(iv) of Special Civil

Application which read as under :-

> pending admission, hearing and final disposal of this petition, this Hon'ble Court may be pleased to issue an ad-interim injunction restraining the respondents in any manner implementing the order passed by the respondent No.3 dated 1.8.1981.

> 3. Under the letter dated 1.8.1981, the District Primary Education Officer, Vadodara, wrote to the Principal of Vidhya Vikas Primary School that the teacher holding the teaching diploma is to be treated as untrained teacher. It has further been ordered under that letter that the salary of such teacher should be drawn as untrained teacher. The petitioner has come up with a case before this Court that he was appointed in the year 1969-70. He was having the qualification of S.S.C. with teaching diploma and it was considered to be qualification sufficient for a trained teacher. He joined the respondent school in the year 1971 and he was given the salary of trained teacher. At no point of time, this objection has been raised by the departmental authorities. "

3. This Court directed the petitioner to make a representation along with zerox copy of the decision of this Court in Spl.C.A. No. 3137/81 as well as copy of the interim relief which was granted by this Court pending the hearing and final disposal of the petition. It is not disputed that the petitioner had complied with the direction and submitted representation along with the copy of the order. As per the directions of the Court, respondent No.2 was supposed to decide the representation of the petitioner within the period of two months and considering the representation of the petitioner, respondent no.2 was obliged to take into consideration the decision of this Court rendered while dealing with Spl.C.A. No. 3137/81. Copy of the judgment and original record were called for by this Court for perusal and the same are available. On perusing the original record, I am satisfied that the facts of Spl.C.A. No. 3137.81 are similar to the facts of the present case. Both the teachers of that petition were not in service in primary section on 1.1.1967. I agree that one of them had served for an year in one primary school in the year 1964-65, but so far as the policy of the Government is concerned, service of one year in the year 1964-65 cannot

be said to be relevant. This Court has also not taken into consideration that fact while dealing with the petition. It seems that the authority has given more weightage only on one observation made by the Court in para-5 of the decision while disposing of Spl.Civil Application Nos. 3137/81 & 3167/81 wherein it is stated that " this should not be a precedent for other cases ". Spl.C.A. No. 3222/81 was to be heard along with aforesaid two petitions. So, the case of the petitioner cannot be equated with the persons other than those who had approached the Court on the same issue or it can be said that Spl.C.A. No. 3222/81 could not have been considered as one of the "other case". If this third petition would have been tagged with aforesaid two petitions tagged and disposed of by this Court on 21.12.1993, by common judgment then the petition of the present petitioner could have also been disposed of and he would have got same result and benefit. Hence, on the broad principle of equity and good conscience and also in view of the principle of parity, the department ought to have accepted the representation of the petitioner without going into technicality.

4. I am not satisfied by the logic or cause for rejection of representation expressed in the affidavit-in-reply filed by the respondents and hence I am inclined to allow this petition.

5. For the reasons aforesaid, petition is allowed. The impugned order dated 3.2.2000 rejecting representation submitted by the petitioner passed by Respondent no.1 as well as the impugned order dated 14.5.1997 passed by Respondent No.2, are hereby quashed and set aside. The petitioner is entitled to be treated as Trained Teacher and is entitled to the salary in the pay-scale of a Trained Teacher, as per the case of the petitioner in his representation. Respondents are directed to compute the difference of amount of salary payable to the petitioner as expeditiously as possible and preferably within six months from today and shall immediately thereafter pay such amount within a period of one month. Petitioner shall co-operate the respondents in computing the amount due and payable to him.

6. Rule is made absolute accordingly. No order as to costs.

24.9.2001 [C.K. BUCH, J]
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